

AMENDED IN SENATE APRIL 6, 2006

**SENATE BILL**

**No. 1650**

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**Introduced by ~~Senator Kehoe~~ Senators *Kehoe and Dunn***

February 24, 2006

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An act to ~~add Section 1263.630 to~~ *amend Section 1263.510 of, and to add Sections 1245.245 and 1263.615 to,* the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, as amended, Kehoe. Eminent domain: ~~future uses.~~

Existing law requires the governing body of a public entity to adopt a resolution of necessity, as specified, and send related notices before commencing an eminent domain proceeding. *Existing law provides that an owner of property taken by eminent domain is entitled to compensation, including compensation for goodwill.*

This bill would require the governing body of a public entity to adopt a new resolution of necessity, *as specified*, and send related notices before the public entity may use the property, in whole or in part, for a public use other than the public use for which the public entity originally acquired the property. *Among other conditions, the bill would require that a new resolution be approved by at least 2/3 of all members of the governing body of the public entity. The bill would provide that specified property subject to the new resolution procedure be offered back to the original owner or owners of the property, subject to certain requirements, if the new resolution fails passage. The bill would require the Department of Housing and Community Development to provide specified information to a public entity in connection with property that is a single-family residence.*

*This bill would also require a public entity acquiring property under specified circumstances to offer the owner of the property a one-year leaseback agreement for that property owner's continued use, subject to the property owner's payment of fair market rents and compliance with other specified conditions, unless the public entity states in writing that the development of the property is scheduled to begin within two years of its acquisition. With regard to the calculation of compensation for the property taken, the bill would prohibit additional goodwill value from accruing during the leaseback.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1245.245 is added to the Code of Civil*  
2     *Procedure, to read:*

3     1245.245. (a) *Before a public entity may use any property*  
4     *acquired by any means set forth in subsection (b), in whole or in*  
5     *part for a public use other than the public use for which the*  
6     *public entity acquired the property as provided in a resolution of*  
7     *necessity pursuant to this article, the governing body of the*  
8     *public entity shall adopt a new resolution relating to that*  
9     *changed use which makes the findings detailed in Section*  
10    1245.230. *In addition to any other notice required by law, the*  
11    *notice required pursuant to this section shall comply with the*  
12    *requirements of Section 1245.235 and shall be sent to each*  
13    *person who was given the notice required by Section 1245.235 in*  
14    *connection with the original acquisition of that property by the*  
15    *public entity. Any judicial review of this resolution shall be*  
16    *governed by Section 1245.255. The new resolution shall be*  
17    *adopted by approval of at least of two-thirds of all the members*  
18    *of the governing body of the public entity, unless a greater vote is*  
19    *required by statute, charter, or ordinance.*

20    (b) *The following property acquisitions are subject to the*  
21    *requirements of this section:*

22    (1) *Any acquisition by a public entity pursuant to eminent*  
23    *domain.*

24    (2) *Any acquisition by a public entity following adoption of a*  
25    *resolution of necessity pursuant to this article for the property.*

1     (3) Any acquisition by a public entity prior to the adoption of  
2     a resolution of necessity pursuant to this article for the property,  
3     but subsequent to a written notice that the public entity may take  
4     the property by eminent domain.

5     (c) If the new resolution required by this section fails, the  
6     public entity shall offer the original owner or owners of the  
7     property the right of first refusal to purchase the property at the  
8     present fair market value, as determined by independent,  
9     licensed appraisers, except as provided in subsection (d).

10    (d) If the new resolution required by this section fails for a  
11    property that is a single-family residence, the public entity shall  
12    offer the original owner or owners of the property the right of  
13    first refusal to purchase the property at an affordable price,  
14    which price shall not be less than the price paid by the agency  
15    for the original acquisition, unless the acquisition price was  
16    greater than the current fair market value, and shall not be  
17    greater than fair market value, if the following requirements are  
18    met:

19    (1) The original owner or owners certify their income to the  
20    public entity as persons or families of low or moderate income.

21    (2) If the single family residence is offered at a price that is  
22    less than fair market value, the public entity may verify such  
23    certifications of income in accordance with procedures used for  
24    verification of incomes of purchasers and occupants of housing  
25    financed by the California Housing Finance Agency.

26    (3) If the single family residence is offered at a price that is  
27    less than fair market value, the public entity shall impose terms,  
28    conditions, and restrictions to assure that the residence will  
29    remain available to persons or families of low or moderate  
30    income and households with incomes no greater than the  
31    incomes of the present occupants in proportion to the area  
32    median income. The Department of Housing and Community  
33    Development shall provide to the public entity recommendations  
34    of standards and criteria for those prices, terms, conditions, and  
35    restrictions.

36    (e) If the original owner of a property does not choose to  
37    purchase the property as provided in subsections (c) and (d) of  
38    this section, the public entity shall sell the property as surplus  
39    property pursuant to Article 8 (commencing with Section 54220)  
40    of Chapter 5 of Division 2 of Title 5 of the Government Code.

1     *SEC. 2. Section 1263.510 of the Code of Civil Procedure is*  
2     *amended to read:*

3     1263.510. (a) The owner of a business conducted on the  
4     property taken, or on the remainder if such property is part of a  
5     larger parcel, shall be compensated for loss of goodwill if the  
6     owner proves all of the following:

7     (1) The loss is caused by the taking of the property or the  
8     injury to the remainder.

9     (2) The loss cannot reasonably be prevented by a relocation of  
10    the business or by taking steps and adopting procedures that a  
11    reasonably prudent person would take and adopt in preserving  
12    the goodwill.

13    (3) Compensation for the loss will not be included in payments  
14    under Section 7262 of the Government Code.

15    (4) Compensation for the loss will not be duplicated in the  
16    compensation otherwise awarded to the owner.

17    (b) Within the meaning of this article, “goodwill” consists of  
18    the benefits that accrue to a business as a result of its location,  
19    reputation for dependability, skill or quality, and any other  
20    circumstances resulting in probable retention of old or  
21    acquisition of new patronage.

22    (c) *If the public entity and the owner enter into a leaseback*  
23    *agreement pursuant to Section 1263.615, the following shall*  
24    *apply:*

25    (1) *No additional goodwill shall accrue during the lease.*

26    (2) *The entering of a leaseback agreement shall not be a*  
27    *factor in determining goodwill. Any liability for goodwill shall be*  
28    *established and paid at the time of acquisition of the property by*  
29    *eminent domain or subsequent to notice that the property may be*  
30    *taken by eminent domain.*

31    *SEC. 3. Section 1263.615 is added to the Code of Civil*  
32    *Procedure, to read:*

33    1263.615. (a) *A public entity shall offer a one-year leaseback*  
34    *agreement to the owner of a property to be acquired by any*  
35    *method set forth in subsection (b) for that property owner’s*  
36    *continued use of the property upon acquisition, subject to the*  
37    *property owner’s payment of fair market rents and compliance*  
38    *with other conditions set forth in subdivision (c), unless the*  
39    *public entity states in writing that the development or*  
40    *redevelopment of the property for its stated public use is*

1 *scheduled to begin within two years of its acquisition. This*  
2 *section shall not apply if the public entity states in writing that a*  
3 *leaseback of the property would create or allow the continuation*  
4 *of a public nuisance to the surrounding community.*

5 *(b) The following property acquisitions are subject to the*  
6 *requirements of this section:*

7 *(1) Any acquisition by a public entity pursuant to eminent*  
8 *domain.*

9 *(2) Any acquisition by a public entity following adoption of a*  
10 *resolution of necessity pursuant to Article 2 (commencing with*  
11 *Section 1245.210) of Chapter 4 for the property.*

12 *(3) Any acquisition by a public entity prior to the adoption of*  
13 *a resolution of necessity pursuant to Article 2 (commencing with*  
14 *Section 1245.210) of Chapter 4 for the property, but subsequent*  
15 *to a written notice that the public entity may take the property by*  
16 *eminent domain.*

17 *(c) The following conditions shall apply to any leaseback*  
18 *offered pursuant to this section:*

19 *(1) The lessee shall be responsible for any additional waste or*  
20 *nuisance on the property, and for any other liability arising from*  
21 *the continued use of the property.*

22 *(2) The lessor may demand a security deposit to cover any*  
23 *potential liability arising from the leaseback. The security*  
24 *deposit shall be reasonable in light of the use of the leased*  
25 *property.*

26 *(3) The lessor shall be indemnified from any legal liability and*  
27 *attorneys fees resulting from any lawsuit against the lessee or*  
28 *lessor, arising from the operation of the lessee's business or use*  
29 *of the property.*

30 *(4) The lessor shall require the lessee to carry adequate*  
31 *insurance to cover potential liabilities arising from the lease and*  
32 *use of the property, and shall require that insurance to name the*  
33 *lessor as an additional insured.*

34 *(5) Additional goodwill shall not accrue during any lease.*

35 *(6) The lessee shall be subject to unlawful detainer*  
36 *proceedings as provided by law.*

37 *(d) A public entity shall offer to renew a leaseback agreement*  
38 *for one-year terms, subject to any rent adjustment to reflect*  
39 *inflation and upon compliance with other conditions set forth in*  
40 *subdivision (c), unless the public entity states in writing that the*

1 *development or redevelopment of the property for its stated*  
2 *public use is scheduled to begin within two years of the*  
3 *termination date of the lease. At least 60 days prior to the lease*  
4 *termination date, the public entity lessor shall either offer a one*  
5 *year renewal of the lease or send a statement declaring that the*  
6 *lease will not be renewed because the development or*  
7 *redevelopment of the property is scheduled to begin within two*  
8 *years of the lease termination date. The lessee shall either accept*  
9 *or reject a lease renewal offer at least 30 days prior to the lease*  
10 *termination date. The lessee's failure to accept a renewal offer in*  
11 *a timely manner shall constitute a rejection of the renewal offer.*  
12 *A lessor's failure to offer a renewal or give the notice as*  
13 *required shall extend the lease term for 60 day increments until*  
14 *an offer or notice is made, and if a notice of termination is given*  
15 *after lease termination date, the lessee shall have no less than 60*  
16 *days to vacate the property. A lessee's failure to accept within 30*  
17 *days a renewal offer made subsequent to the lease termination*  
18 *date shall constitute a rejection of the offer.*

19 *(e) A party who holds over after expiration of the lease shall*  
20 *be subject to unlawful detainer proceedings and shall also be*  
21 *subject to the lessor for holdover damages.*

22 *(f) A leaseback entered into pursuant to this section shall not*  
23 *affect the amount of compensation otherwise payable to the*  
24 *property owner for the property to be acquired.*

25 ~~SECTION 1. Section 1263.630 is added to the Code of Civil~~  
26 ~~Procedure, to read:~~

27 ~~1263.630. Before a public entity may use any property that it~~  
28 ~~acquired by eminent domain, in whole or in part for a public use~~  
29 ~~other than the public use for which the public entity acquired the~~  
30 ~~property, the governing body of the public entity shall adopt a~~  
31 ~~new resolution of necessity pursuant to Article 2 (commencing~~  
32 ~~with Section 1245.210) of Chapter 4. The notice required~~  
33 ~~pursuant to that article shall be sent to each person who was~~  
34 ~~given the notice required by Section 1245.235 in connection with~~  
35 ~~the original acquisition by the public entity.~~